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Meeting Minutes
February 23, 2012
7:30 p.m., City Hall, Room 209

Meeting opened at 7:35 p.m.

MEMBERS PRESENT: S. Lunin, N. Richardson, J. Hepburn, D. Green, and J. Sender; Alternate(s): B. Unsworth

MEMBERS ABSENT: I. Wallach, R. Matthews, and Alternate: R. Gallogly (Barbara Huggins has resigned to serve on another commission)

MEMBERS OF THE PUBLIC: See attached sign-in sheet

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Addition(s) to agenda:

Executive Session: Added by Vice-chair and Acting Chair S. Lunin to discuss violation at 73 Beaconwood St. and approval of minutes from last Executive Session minutes, to be held at end of regular meeting.

Jerry Riley asked to address the commission at the end of the meeting regarding Countryside School.

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Environmental Science Club –Report from David Backer

Report: Env. Planner would like to develop a project the club could do in the Deer Park, which needs attention.

Meeting: The program will be extended into August this year, and will try to incorporate a project in a conservation area or other project to be proposed by Anne. The Deer Park is being considered, but the kids would need tools, or the kids might be able to pick up loose asphalt from Norumbega. The program has about 40 applicants, with 5 requesting scholarships. Dave said the funding from contributors, t-shirt and water bottle sales, and from tuition will allow them to give the leaders a raise and asked approval from the commission to do this and to add two leaders. **Motion made to accept proposal for two new positions and salary increases. Motion seconded. Vote: All in favor. Motion passed.**

Hammond Pond Area ANRAD-continued – Wetland delineation for bordering vegetated wetland around a portion of Hammond Pond

Conservation Commission

1000 Commonwealth Avenue, Newton, Massachusetts 02459

Email: aphelps@newtonma.gov

Report: A plan was submitted, dated 11-29-2011, prepared by Bioengineering Group, and stamped by Michael A. Pustizzi, P.L.S. The Notes section was revised in response to comments from Env. Planner (Plan revised 12-8-11), and the BVW line was revised in response to Planner's site visit 12-13-2011, with Bioengineering Group ecologist, Phil Drury. Changes are shown on current plan with revision date 12-15-2011.

The Floodplain/Watershed Ordinance, Sec. 22-22, sets the upper limit of BVW at elevation 173. The plan submitted with the ANRAD showed BVW varying between elevations ~173 and 175, based primarily on vegetation. The line agreed upon from Env. Planner's site visit was also based primarily on vegetation (primarily high bush blueberry), but was expanded in some places because of seepage areas, and in a couple of places because a footpath seemed to represent an artificial break in the wetland vegetation.

The commission may

- 1) Accept the revised plan and upper limit of BVW as shown
- 2) Reject the revised plan and use the 173 elevation in the Floodplain/Watershed Ordinance
- 3) Request the applicant provide additional information, i.e., provide soil hydrology information from a soil scientist to try to get a more precise determination of the wetland line

Planner believes the "more strict, or more conservative" interpretation would be whichever places the BVW farthest from the pond edge – thus #1 (and the WPA) would provide a "more strict" interpretation over the Floodplain/Watershed Ordinance (Sec. 22-22). Soil hydrology would likely provide a line closer to the pond than #1.

Env. Planner recommends the commission approve BVW flag line, starting at the boundary line between City and DCR and proceeding roughly south: BVW 2/16, BVW 2/17, BVW 2/18A, BVW 2/18B, BVW 2/18C, BVW 2/19, BVW 2/20A, BVW 2/20B, BVW 2/20C, BVW 2/22. BVW 2/23 (ends at bank opening cleared by pedestrian path users); BVW 3/1 – BVW 3/9, BVW 3/11C, BVW 3/11B, BVW 3/11A, BVW 3/11 (end of DCR land);

Provided that the commission receives revised ANRAD signature pages signed by owners of parcels owned by Daniel E. Rothenberg & Julian Cohan Trust (western parcels of Chestnut Hill Shopping Center – all managed by WS Weiner), Env. Planner also recommends approval of flag line: BVW 3/12 – BVW 3/17, and BVW 4/1-BVW 4/9 along the edge of the Chestnut Hill Shopping Center, as shown on plan.

Meeting: Kathy Bradford and Phil Drury, Bioengineering Group, and Rick Corsi, DCR, were present for the project. A new signature page containing the signature of the owner of the Shopping Center property was submitted. Following a brief discussion, in which it was noted that other jurisdictional areas are on the plan, but not being reviewed at this time, **motion was made to accept the revised plan for the upper limit of BVW as shown. Motion seconded. Vote: All in favor. Motion passed.**

229 Winchester St. – Mike Kosmo, at request of Commission

Report: As-built for property shows that driveway wider than approved by OOC. A strip was to be removed starting near the street to reduce width to 15 ft, but this was not done, and pavement area is wider near deck at rear of driveway than on Record Plan. Engineer certified this was compliant. Newton engineering department also said it cannot verify from as-built whether compensatory flood storage area was created as proposed, although Record Plan indicated much more would be created than that required for replacement. Env. Planner recommended approval based on engineer's letter, and COC was issued some time ago.

Meeting: Michael Kosmo, Everett Brooks, was present to discuss differences between the record plan and what was presented on the as-built plan as being in “substantial compliance.” M. Kosmo said he made a judgment of substantial compliance rather than strict compliance. When asked why he does not submit final calculations of compensatory flood storage area, he noted that he submits drainage calculations. Env. Planner noted that the regulations do not require a single-family residence to meet the storm water standards – only to regulate the amount of impervious surface. The commission made the point that the engineer should list the differences so that the commission can determine “substantial compliance.” B. Unsworth will check for a legal definition of ‘substantial compliance,’ and the Environmental Planner will check with the Law Department as to whether the commission has any recourse on this property. The commission advised the engineer that, in future, the commission would like to have all exceptions listed, and a submission of final calculations for compensatory flood storage.

DCR Yearly Operating Plan (VMP) for Newton RDA-Continued to Jan. 26 meeting

Report: No one was present in Dec. to represent DCR, so the commission continued to Jan. The Env. Planner called and spoke to Northern Tree Service, and sent an email. There was a verbal agreement that Mr. Lacombe would send a written request to extend the hearing to the fall, but no such request has been received.

Meeting: Env. Planner received a request from the proponent to continue the hearing to the November 15th meeting.

17-19 Dunstan St. NOI –After-the-fact for enlargement and paving of driveway in the 200 ft riverfront and in flood zone, and to perform mitigation for prior Order of Conditions

Report: OOC 239-234 issued in 1997- after the Riverfront Act. Since this is “after-the-fact”, the Riverfront Act would apply, anyway. Work in the Riverfront is subject to an alternatives analysis, so the entire lot must be considered. PLEASE REVIEW PACKET MATERIAL FROM LAST MEETING.

- 1) Driveway increase and paving can be permitted, with mitigation
- 2) Engineering requires oil/gas trap and infiltration of runoff – so that will be done, anyway
- 3) Orig. mitigation not done; applicant proposes to remove “invasives” – NOT shown on plan, so not sure if any trees (and their canopy) to remain. Replacement vegetation consists of 3 woody species, witch hazel (a small tree), blueberry (a small shrub), and Rhododendron maximum (which is almost never planted in actuality), not a preferred species for wildlife – the rest is proposed to be “wildflowers” or “herbs” ;

Env. Planner’s opinion is that the planting plan is not acceptable as is, and would recommend

- 1) Plan should label and save native vegetation
- 2) Plan should replacing half the witch hazel with white pine (for winter cover) or add two (2) red maple (for canopy), and replace Rhodos with MA native Viburnum species (R. maximus is difficult to find, usually replaced with non-natives, and offers poor wildlife habitat), and replace herbaceous plants (flowers) with bearberry, native sedges, native ferns.
- 3) The mitigation area should be re-configured so that it does not overlies the infiltration galleries
- 4) The mitigation area should be permanently demarcated for easy location, and maintenance of plantings should be an on-going condition.

Meeting: Jennifer and Howard Chang (owners of #19) and Nina Neivens (owner of #17), Jason Rosenberg, Esq., and Lawrence Lee, Esq., and Scott Goddard, Goddard Consulting, were present to discuss the project. J. Rosenberg noted the builder is at fault for the expanded driveway and paving, for the failure to provide mitigation plantings, and for the conversion of ground floor (marked “for storage” on the deed plan) to an office space. When the owners of #19 wanted to sell, they discovered there was no Certificate of Compliance. The buyer backed out, and the owner has filed a new Notice of Intent

to keep the larger driveway and asphalt paving, and to install leaching galleys and plant a mitigation area. Also, the owners have blocked louvers at base of the building for flood-water flow on more than one occasion, which is a violation that needs to be addressed.

The proposal is to close out the old OOC with work conducted under a new NOI, but no COC can be issued until all work under the old and new Orders is completed. The entire property is in flood zone (bordering land subject to flooding), as well as riverfront (to Cheesecake Brook). The increase in driveway/impervious area is 655 sf larger than approved and closer to the bank than approved. Applying all increase to "redevelopment" requires a 2:1 mitigation area of an additional 1310 sf. Application proposes 1006 sf additional mitigation planting area. The commission wants the Euonymus (burning bush) planted along the bank to be removed completely from the property (it is an invasive plant, now banned from sale in MA), although the owner has also planted it on the opposite side of the property, and along the front. Planner asked if the silt fence (that had been trailing in the brook) had been removed, and was informed it is gone. A question was raised about the extension of the driveway toward the brook, and whether some asphalt could be removed, or a concrete berm put in place.

Motion proposed to issue OOC with standard conditions and the following nine (9) special conditions:

- 1) Asphalt berm (bump-out for backing and turning) on side of driveway nearest Cheesecake Brook Shall be replaced with one of cast concrete or granite to prevent future break down of the asphalt that could allow run-off toward the stream to occur**
- 2) Non-native, invasive species, including Norway maple trees, shall be removed from the mitigation area, and Euonymus removed shall not be replanted on the lot (it is on the MA state invasive species list), although Euonymus planted elsewhere on the lot may remain. Stumps of Norway maples may be injected with herbicide to try to limit lingering effects of competitive allelopathy**
- 3) Boundary of plant mitigation area shall be marked with rebar imbedded in the ground with orange plastic caps**
- 4) Owners shall, according to agreement, record a deed restriction that requires 1) the louvers (four of them) located approximately at each corner of the building, and designed to allow the free flow of flood water, shall remain open and un-blocked at all times, and 2) the lowest two (2) feet of the interior of the building shall NOT be used for storage, but that storage is allowed on shelves of a height at least 2 ft above floor level**
- 5) Regardless of the requirements of Newton special condition #29, excavated soils removed for construction of the infiltration galleys may be temporarily stockpiled on site, provided that no rain is forecast for three (3) days prior to the beginning of this excavation**
- 6) No excavation may occur on site until the erosion and sediment controls have been installed and approved by the Env. Planner prior to the start of work per special Newton condition #20**
- 7) A revised planting plan shall be submitted to and approved by the Env. Planner prior to the start of work**
- 8) The revised planting plan shall show a re-configured mitigation area, such that it does not overlie the infiltration galleys**
- 9) Mitigation plantings and mitigation planting area (to include and replace the mitigation area approved under DEP #239-324) shall be maintained in perpetuity**

Motion seconded. Vote: All in favor. Motion passed.

Violations (new and updates):

320-322 Needham St. EO – Owner did not attend Oct. or Nov. meeting-Letter sent for owner to attend this meeting

Meeting: Alan Schlesinger, Attorney for owners of 320-322 Needham St. was present. Letter dated February 22, and received same day, from Alan Schlesinger, Esq., was distributed and discussed at the meeting.

193 Oak St. Village Condos EO – O&M plan to be approved

Meeting: Env. Planner reported nothing new.

73 Beaconwood Rd. EO-In the Law Department

Certificates of Compliance:

100 Boulder Rd.-As-built and letter submitted last year; hay-bales now removed

Report: Trying to resolve some (minor?) discrepancies

Meeting: The commission addressed questions with Mike Kosmo, the engineer of record. A wooden swing set in the flood zone is shown on the record plan but not on the As-built plan. However, the swing set is presently in the back yard. Compensatory flood storage area was to be created, but the grade lines have not changed. M. Kosmo said the change may be too minor to show, but he will supply calculations for the amount of material removed. The commission does not approve issuance of the Certificate of Compliance until it receives the calculations for the compensatory storage, and it has requested a new planting plan prior to its meeting on March 22.

299 Winchester St. –Sign corrected copy

Meeting: The commission signed the corrected copy of the Certificate of Compliance, and requested that the Env. Planner consult with the Law Department on whether there is any recourse regarding the non-compliance of the driveway.

17-19 Dunstan St. –Applicant is not in compliance with old Order (see above)

Meeting: The commission declined to approve a Certificate of Compliance until the work approved under the new Order of Conditions is completed and a Certificate of Compliance can be issued for both.

Riverside MBTA Station- No as-built or letter submitted

Discussion/Reports:

Crystal Lake Storm water/drainage work-Katherine Howard about tree damage concerns

Meeting: Katherine Howard, Chair of Newton Urban Tree Commission, provided a copy of the Public Tree Ordinance (Sec. 20-72, issued February 22, 2011), which, under §2 requires a Tree Permit for any construction on city property within the dripline of a public tree. The current work to collect storm water run-off from the bath house parking lot and pipe it to infiltration galleys on the adjacent parcel, involves trenching within the dripline of a public tree. The Env. Planner reported she met with K. Howard and T. Jerdee, Utilities Division, and committed to consulting with Marc Welch to determine if the tree needs special treatment. We will work with the Tree Commission to meet their recommendations and fulfill the requirements of the ordinance. The commission asked that compliance with this ordinance be added to the commission's list of standard special conditions for review at the next meeting.

Marriott donation of \$20,000 for Norumbega

The Env. Planner reported meeting with four contractors at Norumbega, and said she is still collecting estimates. Uses for the funds that are being considered include removal of asphalt, restoration/repair of eroded slope, and creation of accessible path.

Draft Conservation Area Management Plan

Meeting: The commission deferred this to the next meeting, and the Vice-chair asked members to bring notes and/or comments to the next meeting.

383 Dedham St. CRCC- Report on outstanding OOCs

Meeting: Deferred to next meeting.

Shaw's donation for drainage improvements for Hammond Pond-J. Sender: Discussion and vote to accept

Meeting: Env. Planner reported contact with MA DOT's Rick McCullough. Plans have been forwarded and he is coordinating with DCR. The commission will wait one more month, then will make phone calls to speed things along, if necessary.

Lot 5 Kessler Way-Petitioner has withdrawn appeal and is settling with Lot 5 owner

***38 Grayson Ln.-** Env. Planner held a spot for this to be heard under Requests for COC, but owner did not meet deadline, nor provide requested information by the date of this packet

Meeting: Deferred to next month.

Jerry Riley regarding Countryside School: Mr. Riley said he is interested in building a boardwalk in the wetland adjacent to South Meadow Brook, and that he is motivated by concerns for the environment and the wetlands. He said the commission reviewed the proposal put forth by Eric Olsen, and four years later the project has not been done. The plan now is a few picnic tables outside the wetlands. Building structures in flood zone and bordering vegetated wetlands requires wetland replacement (compensatory flood storage area for flood zone, 2:1 wetland replication for bordering vegetated wetland).

Announcements & General Business:

January 26th, 2012 Meeting Minutes for approval

Meeting: Motion to accept the minutes with one edit. Motion seconded. Vote: All in favor. Motion passed.

11:05 p.m.: Motion to go into Executive Session to discuss violation at 73 Beconwood Road and to adjourn the meeting at the end of the executive session. Motion seconded. Vote: S. Lunin votes "aye", N. Richardson votes "aye", J. Hepburn votes "aye", D. Green votes "aye", and J. Sender votes "aye". Motion passed.

Meeting adjourned at 11:45 p.m.

Respectfully submitted,

Anne Phelps, Sr. Environmental Planner